

June 2, 1976

His Excellency, Meldrim Thomson, Jr.
Governor of the State of New Hampshire
State House
Concord, New Hampshire 03301

Your Excellency:

In 1974 Mr. Goode inquired whether in making subsequent appointments under RSA 125:75 (supp) to the Radiation Advisory Committee the Governor and Council are limited to choices from among the three persons whose names were given by the Committee. I told him that in view of the loose language, I thought it was more probable than not that the Supreme Court would hold that the Governor and Council were so limited. Earlier this spring, you asked me to think about the question again, which I have done.

I am mindful that the language of this section is not obviously mandatory, that original appointments to the Committee were not, of course, subject to any such constriction, and that the operative word is "consideration." Emphasis of these points would argue that the process was an advisory one only. Although I think such arguments would be respectable they do not persuade me that the New Hampshire Supreme Court would so hold.

The purpose of the provision in question is "to assure the proper balance of skills . . ." (emphasis added). The theory behind this provision seems to be that it is the members of the Commission who are in the best position to make judgments about who could make a proper balance. The truth is that the question raised is really an intellectual fence-sitter. In such cases, personalities and the attitudes of the Court end up tipping the balance to one side or the other. I think you would have a respectable case if you took the position that you and the Council were not bound by the

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three names, but my best judgment still is that you would be more likely to lose on the issue in the New Hampshire Supreme Court than to win.

Yours respectfully,

David H. Souter
Attorney General

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